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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/397,134	09/16/1999	GERHARD THIEN	19050	8357

7590 03/26/2002

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EXAMINER

MCALLENAN, JAMES M

ART UNIT

PAPER NUMBER

3745

DATE MAILED: 03/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/397,134	Applicant(s) THIEN, GERHARD	
	Examiner James M McAleenan	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/04/2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 12/04/2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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Continued Prosecution Application

1. The request filed on 12/04/2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/397,134 is acceptable and a CPA has been established. An action on the CPA follows.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 13 and 17-18 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. The claimed invention is inoperative because even though the Applicant has mentioned friction in the specification (see page 2, lines 15-1; page 4, lines 1-3; and page 9, lines 1-5.), Applicant has inherent frictional problems with the claimed invention. Note, Applicant has explained the mechanical frictional problems and the forces of buoyancy that generate torque to overcome the frictional problems. Applicant has stated the claimed invention overcomes the prior art of the British Patent Number 35,705 (Dated No. 1330 on May 12, 1857), Kusmer (U.S. Patent Number 3,412,482) and Diamond (U.S. Patent Number 3,934,964), of which the examiner acknowledges the presentment of his stated argument. Applicant has acknowledged the examiner's prior argument concerning the sliding friction of the piston-and-

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cylinder unit (12) between the cylinder (20) and the cylinder chamber (16), as being overcome, as

Applicant states: "In principle, the apparatus according to the invention can be operated in any fluid which, with practicable changes in the volumes of the bodies, supplies a sufficiently large increase in buoyancy for at least the frictional forces acting in the apparatus to be overcome."

Examiner disagrees with the Applicant that the frictional problems can be overcome by the forces of buoyancy to generate torque to operate a shaft to drive/power some apparatus. Further, Applicant has not disclosed the claimed invention will run for any particular period of time, thus leaving the examiner to assume Applicant's invention may be considered as a perpetual motion apparatus. Since the intended mode of operation of Applicant's device appears to conflict with the well known and accepted principles, the presumption of inoperativeness is so strong that very clear evidence is required to overcome it. Therefore, Applicant is required to submit a working model of Applicant's claimed invention.

3. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner James M. McAleenan whose telephone number is (703) 308-2827. The examiner can normally be reached on Monday thru Friday from 9:00 am to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached at (703) 308-1044. The fax number for this Group is (703) 305-3588.

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An inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

James M. McAleenan
Patent Examiner
Art Unit 3745

James M. McAleenan 3/20/02

F. Daniel Lopez
F. DANIEL LOPEZ
PRIMARY EXAMINER